



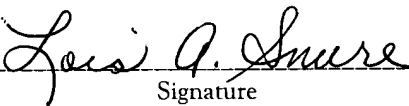
1773

Patent
2303-1-015N

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Darrell L. Sparks *et al.*
SERIAL NO. : 09/817,788 EXAMINER : Sheeba Ahmed
FILED : March 26, 2001 ART UNIT : 1773
FOR : PLASTIC SHEET PRODUCT WITH MATTE APPEARANCE AND
METHOD OF PREPARATION

REQUEST FOR DECLARATION OF INTERFERENCE UNDER 37 CFR 1.607(a)

CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on <u>April 29, 2005</u> .
 Signature
<u>Lois A. Snure</u> Typed or printed name of person signing Certificate

Mail Stop **Amendment**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants filed an Amendment and Response on September 22, 2004 in the above-noted application explaining in detail the patentability of the pending claims. Applicants note that on March 1, 2005, the USPTO issued U.S. Patent No. 6,861,129, a copy of which is enclosed. The subject patent issued from United States Serial No. 10/390,374 filed on March 17, 2003 and published pursuant to 35 U.S.C. 122(b) on January 29, 2004. The subject patent application in turn claims priority to Provisional Application No. 60/368,076, filed on March 26, 2002.

The instant patent application was filed on March 26, 2001 and claims priority to Provisional Application No. 60/192,057 filed on March 24, 2000. As such, the instant application enjoys an effective filing date that is a full two years earlier than the priority date claimed by the application resulting in U.S. Patent No. 6,861,129. Moreover, the issued patent claims substantially the same subject matter to some of the subject matter claimed in the instant application.

I. The requirements of 35 U.S.C. 135(a) and 37 C.F.R. 1.607(a)

Applicants request a Declaration of Interference pursuant to 35 U.S.C. 135(a) and 37 C.F.R. 1.607(a). The requirements of 37 C.F.R. 1.607(a) are as follows:

(a) An applicant may seek to have an interference declared between an application and an unexpired patent by,

- (1) Identifying the patent,
- (2) Presenting a proposed count,
- (3) Identifying at least one claim in the patent corresponding to the proposed count,
- (4) Presenting at least one claim corresponding to the proposed count or identifying at least one claim already pending in its application that corresponds to the proposed count, and, if any claim of the patent or application identified as corresponding to the proposed count does not correspond exactly to the proposed count, explaining why each such claim corresponds to the proposed count, and
- (5) Applying the terms of any application claim,
 - (i) Identified as corresponding to the count, and
 - (ii) Not previously in the application to the disclosure of the application.
- (6) Explaining how the requirements of 35 U.S.C. 135(b) are met, if the claim presented or identified under paragraph (a)(4) of this section was not

present in the application until more than one year after the issue date of the patent.

Applicants herein expressly fulfill each of the requirements.

1. Identifying the patent

Applicants seek a Declaration of Interference between United States Serial No. 09/817,788 and United States Patent No. 6,861,129, issued on March 1, 2005 to Reilly *et al.* and assigned to Atofina of Puteaux, France.

2. Presenting a proposed count

Applicants propose the following Count 1 which corresponds exactly to the broadest claim currently pending in the instant application, namely claim 26. Claim 26 was presented by way of an Amendment filed on September 22, 2004, within one year of the publication of U.S. Application No. 2004/0018349 on January 29, 2004 and more than five months prior to the issue date of U.S. Patent No. 6,861,129. Even if, *assuming arguendo*, claim 26 had been filed more than one year after the publication date of the subject patent application or more than one year after the issue date of the subject patent, the requirements of 35 U.S.C. 153 would have still been met as claim 1 of the instant application as originally filed among other claims also corresponds to the proposed Count 1.

Count 1

A plastic sheet product having a matte finish and improved abrasion resistance and weathering comprising a core layer of a first thermoplastic polymer and at least one layer of a capstock composition overlying and bonded to at least one face of the core layer, said capstock composition comprising a second thermoplastic polymer and containing a plurality of discrete particles immiscible with, and dispersed in, the second thermoplastic polymer, the discrete particles having a diameter between 20 and 80 microns, and being

dispersed in the second thermoplastic polymer in an amount of about 12 to about 30% by weight, and said capstock composition having a thickness of from 100 to 400 microns.

3. Identifying at least one claim in the patent corresponding to the proposed count

Applicants submit that all of the issued claims of U.S. Patent No. 6,861,129, namely claims 1-11, correspond to the proposed Count 1. Each recitation of the proposed Count 1 corresponds to each recitation of independent claims 1 and 11 of the subject patent as follows:

<u>COUNT 1</u>	<u>CLAIM 1</u>	<u>CLAIM 11</u>
A plastic sheet product having a matte finish and improved abrasion resistance and weathering	1. "A mar resistant transparent co-extruded sheet"	11. "A polished transparent co-extruded sheet"
comprising a core layer of a first thermoplastic polymer and	1. "a clear substrate layer comprised of an acrylic composition, wherein the substrate has a refractive index within 0.020 units of the refractive index of the cap layer matrix when measured in conformance with ASTM D 542"	11. "a clear layer of an acrylic substrate of MMA/EA, wherein the substrate has a refractive index within 0.005 units of the refractive index of the cap layer matrix when measured in conformance with ASTM D 542"
at least one layer of a capstock composition overlying and bonded to at least one face of the core layer,	1. "a cap layer"	11. "a cap layer"
said capstock composition comprising a second thermoplastic polymer and containing a plurality of discrete particles immiscible with, and dispersed in, the second thermoplastic polymer	1. "a cap layer containing particles having a mean particle size of about 1 to 60 microns"	11. "a cap layer, 0.001 to 0.025 inches thick containing particles having a mean particle size of about 10 to 32 microns wherein 90% of the particles are less than 40 microns, at a loading of 0.1 to 18%"
the discrete particles having a	1. "a cap layer containing	11. "containing particles having a

diameter between 20 and 80 microns, and	particles having a mean particle size of about 1 to 60 microns”	mean particle size of about 10 to 32 microns wherein 90% of the particles are less than 40 microns, at a loading of 0.1 to 18%”
being dispersed in the second thermoplastic polymer in an amount of about 12 to about 30% by weight,	1. “wherein 90% of the particles are less than 70 microns, at a loading of 0.1 to 18%”	11. “containing particles having a mean particle size of about 10 to 32 microns wherein 90% of the particles are less than 40 microns, at a loading of 0.1 to 18%”
and said capstock composition having a thickness of from 100 to 400 microns.	<p>1. “and at least one properly selected from (ii) or (iii),</p> <p>(ii) 60° gloss values measured on two different sheet thicknesses within the range of 0.04 to 0.5 inches thick which are within 15 units of each other when measured using a micro-TRI-gloss meter in conformance with ASTM D 523 using a black felt backing, and</p> <p>(iii) a change in haze as measured in conformance with ASTM D 1044, after 500 revolutions using a 500 g load and CS10F wheel, of less than 25%.”</p>	11. “ a cap layer, 0.001 to 0.025 inches thick”

By way of dependency from claims 1 and 11, each of the remaining dependent claims, namely claims 2-10 of the subject patent, also correspond to proposed Count 1.

4. Presenting at least one claim corresponding to the proposed count or identifying at least one claim already pending in its application that corresponds to the proposed count, and, if any claim of the patent or application identified as corresponding to the proposed count does not correspond exactly to the proposed count, explaining why each such claim corresponds to the proposed count

Applicants submit that all of the pending claims in the instant application, namely claims 26-29, 31-32, 34-45, 47-51, 53 and 55 correspond to the proposed Count 1. As explained *supra*, the proposed Count 1 corresponds exactly to claim 26, currently pending in the application. There are two independent claims currently pending in the instant application, namely claims 26 and 27.

Claim 27 differs from claim 26 and therefore differs from proposed Count 1 in that it has one different recitation in lines 3 and 4 that [the sheet comprises] “two layers of a capstock composition overlying and bonded to both top and bottom faces of the core layer” whereas claim 26 and thereby proposed Count 1 recites at the identical place in lines 3 and 4 that [the sheet comprises] “at least one layer of a capstock composition overlying and bonded to at least one face of the core layer.” Thus, the difference in the two claims in relation to proposed Count 1 is demonstrated as follows:

<u>COUNT 1</u>	<u>CLAIM 26</u>	<u>CLAIM 27</u>
A plastic sheet product having a matte finish and improved abrasion resistance and weathering	26. “A plastic sheet product having a matte finish and improved abrasion resistance and weathering”	27. “A plastic sheet product having a matte finish and improved abrasion resistance and weathering”
comprising a core layer of a first thermoplastic polymer and	26. “comprising a core layer of a first thermoplastic polymer and”	27. “comprising a core layer of a first thermoplastic polymer and”
said capstock composition comprising a second thermoplastic polymer and containing a plurality of discrete	26. “said capstock composition comprising a second thermoplastic polymer and containing a plurality of	27. “said capstock composition comprising a second thermoplastic polymer and containing a plurality of discrete particles immiscible

particles immiscible with, and dispersed in, the second thermoplastic polymer	discrete particles immiscible with, and dispersed in, the second thermoplastic polymer”	with, and dispersed in, the second thermoplastic polymer”
the discrete particles having a diameter between 20 and 80 microns, and	26. “the discrete particles having a diameter between 20 and 80 microns, and”	27. “the discrete particles having a diameter between 20 and 80 microns, and”
being dispersed in the second thermoplastic polymer in an amount of about 12 to about 30% by weight,	26. “being dispersed in the second thermoplastic polymer in an amount of about 12 to about 30% by weight,”	27. “being dispersed in the second thermoplastic polymer in an amount of about 12 to about 30% by weight,”
and said capstock composition having a thickness of from 100 to 400 microns.	26. “and said capstock composition having a thickness of from 100 to 400 microns.”	27. “and said capstock composition having a thickness of from 100 to 400 microns.”

Claims 28, 29, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 43, 45, 48, 49, 50, 51, 53 and 55 rest their dependency upon claim 26. Claims 42 and 47 rest their dependency upon claim 27. As such, all of the aforementioned dependent claims do no more than more particularly describe certain embodiments of the invention within the scope of claims 26 and 27 and must therefore also correspond to the proposed Count 1.

5. Applying the terms of any application claim, (i) identified as corresponding to the count, and (ii) not previously in the application to the disclosure of the application.

Applicants submit that all of the claims currently pending in the instant application correspond to the proposed Count 1 as set forth in section 4, *supra*. However, all of the claims

were pending in the application at least as early as September 22, 2004, within one year of the publication of U.S. Application No. 2004/0018349 on January 29, 2004 and even before issuance of U.S. Patent 6,861,129 on March 1, 2005. As such, there is no requirement to apply the recitations of the claims to the disclosure. The recitations of the claims find express support in the application as filed as the Examiner has already determined.

6. Explaining how the requirements of 35 U.S.C. 135(b) are met, if the claim presented or identified under paragraph (a)(4) of this section was not present in the application until more than one year after the issue date of the patent.

Applicants submit that all of the claims currently pending in the instant application were pending in the instant application in their current form including any amendments at least as early as September 22, 2004, within one year of the publication of U.S. Application No. 2004/0018349 on January 29, 2004 and before issuance of U.S. Patent 6,861,129 on March 1, 2005. Moreover, many of the claims, including claims 28-29, 34-38, 41, 45, 47-51, 53 and 55, were pending in the instant application at least as early as the filing date of the instant application on March 26, 2001. Hence, the requirements of 35 U.S.C. 135(b) are met.

II. There are no further statutory requirements

The provisions of 37 C.F.R. 1.608(a) and 1.608(b) are not applicable to the present Request for Declaration of Interference since the effective filing date of the instant application is a full two years earlier than the effective filing date of the issued patent with which interference is sought. Applicants further note that if the patent issued from an application which was published under 35 U.S.C. 122(b), there is a one year from publication date limitation found in 35 U.S.C. 135(b)(2) with respect to applications filed after the date of publication. This provision is likewise not applicable to the instant circumstances since the instant application was filed on

March 26, 2001, prior to the publication of the subject patent application on January 29, 2004. Therefore, Applicants submit that no further showing is required in order for a Declaration of Interference to be made.

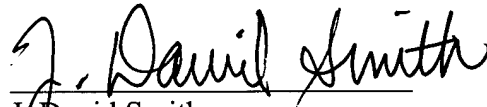
III. Request for Special Dispatch

Applicants respectfully remind the Examiner that **37 CFR 1.607** requires that examination of an application in which applicant seeks an interference with a patent "shall be conducted with special dispatch." See, **MPEP § 708.01**. As such, Applicants request prompt attention to the issues outstanding.

IV. Conclusion

It is believed that no fees are due in connection with this submission. However, if any fees are due, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment, or credit any overages. In view of the foregoing facts, early Notification of Declaration of Interference is earnestly sought. In the interest of judicial efficiency and clarity of the issues, structuring the interference to include proposed Count 1 and designation of all the claims pending in the instant application and issued in the patent as corresponding thereto is solicited.

Respectfully submitted,


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